

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 3. AGRICULTURE

#### CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

##### PREAMBLE

- 1. Sections Affected**  
R3-2-202
- Rulemaking Action**  
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**  
Authorizing statute: A.R.S. § 3-107(A)(1)  
Implementing statutes: A.R.S. §§ 3-2046, 3-2088, 3-2154, and 3-2161
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 10 A.A.R. 366, January 30, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Sherry D. Blatner, Rules Analyst  
Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-mail: sherry.blatner@agric.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
This rulemaking updates the Department's rule regarding meat and poultry slaughter and inspection to match administrative and technical changes in federal rules. Incorporations by reference are updated.  
Language use is conformed to the rulewriting standards of the Office of the Secretary of State.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**
  - A. *The Arizona Department of Agriculture.*  
The Department will incur modest expenses related to educating staff and the regulated community on the amendments.

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B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected by the Rulemaking.*

Incorporation of the amended federal regulation in the rule updates organizational and technical matters adopted by the Food Safety and Inspection Service ("FSIS") of the USDA. The adoption will not affect the costs of regulated establishments. Providing the public with current information on how the FSIS operates should increase the Department's efficiency and improve the delivery of inspection services to the regulated industries.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Sherry D. Blatner, Rules Analyst  
Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-mail: sherry.blatner@agric.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding is not scheduled for this proposed rule. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on March 1, 2004.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rule:**

9 CFR Chapter III, Subchapters A and E, revised as of January 1, 2003, amended 69 FR 250-255, January 5, 2004. This material is incorporated by reference, is on file with the Department, and does not include any later amendments or editions. The following parts and sections of 9 CFR are excepted from incorporation:

302.2	322	331	381.96 through 381.112
307.5	327	335	381.195 through 381.209
307.6	329.7	381.38	381.218
312	329.9	381.39	381.220 through 381.225

The incorporated material appears in R3-2-202(A) and (B).

**13. The full text of the rule follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 2. DEPARTMENT OF AGRICULTURE  
ANIMAL SERVICES DIVISION**

**ARTICLE 2. MEAT AND POULTRY INSPECTION**

Section

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

**ARTICLE 2. MEAT AND POULTRY INSPECTION**

**R3-2-202. Meat and Poultry Inspection; Slaughtering Standards**

A. All meat inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters A and E, revised as of January 1, 2004, amended 69 FR 250-255, January 5, 2004. This material is incorporated by reference, on file with the Office of the Secretary of State Department, and does not include any later amendments or editions. The following parts and sections of 9 CFR are excepted from incorporation: 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, and 335.

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- B. All poultry inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters A and E, revised as of January 1, 2004 2003, amended 67 FR 13253-13259, March 22, 2002 69 FR 250-255, January 5, 2004. This material is incorporated by reference, on file with the Office of the Secretary of State Department, and does not include any later amendments or editions. The following sections of 9 CFR are excepted from incorporation: 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218, and 381.220 through 381.225.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

1. **Sections Affected**

	<b><u>Rulemaking Action</u></b>
Article 1	New Article
R4-15-101	New Section
R4-15-102	New Section
Article 2	New Article
R4-15-201	New Section
R4-15-202	New Section
R4-15-203	New Section
R4-15-204	New Section
R4-15-207	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-4203

Implementing statutes: A.R.S. §§ 32-4221(A), 32-4222, 32-4223, 32-4224, 32-4227, 32-4228, and 41-1072 through 41-1079
3. **A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 215, January 9, 2004
4. **The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name: Dr. Craig Runbeck, Executive Director

Address: 1400 W. Washington, Suite 230  
Phoenix, AZ 85007

Telephone: (602) 542-8604

Fax: (602) 542-3093

E-mail: craig.runbeck@npbomex.az.gov
5. **An explanation of the rules, including the agency's reasons for initiating the rules:**

The Board of Massage Therapy (Board) was established by the legislature in 2003 within the Naturopathic Board of Medical Examiners to license and regulate the practice of massage therapy in Arizona. A.R.S. § 42-4221(A) requires that, beginning on July 1, 2004, an individual who wishes to practice massage therapy in Arizona be licensed. A.R.S. §§ 32-4221 (regular and provisional licenses), 32-4223 (license by reciprocity), and 32-4224 (temporary license) require that an individual wishing to be licensed submit to the Board an application containing the information required by the Board. A.R.S. § 32-4228 requires Board approval of massage and bodywork therapy schools. These rules set forth what is required on an application for a regular and provisional license, license by reciprocity, and massage and bodywork therapy school approval. The rules also set forth the licensing time-frames for Board action on the applications.
6. **A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
7. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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**8. The preliminary summary of the economic, small business, and consumer impact:**

The Board believes that it will receive between 5000 to 6000 massage therapist applications for licensure in 2004. While some municipal jurisdictions currently license massage therapists, most do not. This is especially true in rural areas. Many massage therapists in the Phoenix and Tucson areas are licensed in more than one city and thus are required to pay a license fee by each city. The Board estimates it will receive approximately 30 applications for school approvals in 2004. The Board believes that approximately 80% of the Board approved schools are small businesses as defined in A.R.S. § 41-1001.

The costs of the rules will be borne by the Board, applicants for licensure, and applicants for school approvals. The benefits of the rules will be realized by applicants for licensure, applicants for school approvals, and consumers of massage therapy services. As used in this summary, minimal means less than \$100, moderate means \$100 to \$999, and substantial means \$1000 or more.

The rules require the Board to create application forms. The Board will incur a moderate to substantial cost for producing new application forms. The Board will also realize a moderate benefit from the new application forms because applicants should find it easier to apply and thus have fewer questions and make fewer mistakes that require Board attention.

The rules require an applicant for licensure to submit an application packet to the Board. The costs to submit the application form and other required documents should be minimal for the applicant. The application fee for the applicant is also minimal. Some applicants benefit because they will not be required to pay more than one fee to practice massage therapy throughout the state.

The rules require that an applicant seeking school approval submit an application packet to the Board. The costs to the applicant should be minimal. The applicant is not required to submit an application fee.

The Board will incur minimal to moderate costs to process the application forms and documents. If the application packet is incomplete, the Board will incur minimal costs to write a letter of incompleteness noting the documents or information missing and for postage to mail the letter to the applicant.

The rules require the Board to conduct a substantive review of each application. The costs for this review range from minimal to moderate for each applicant.

Consumers of massage therapy services benefit from the rules because only massage therapists that meet the requirements contained in the rules and statutes will be allowed to practice in Arizona.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Dr. Craig Runbeck, Executive Director  
Address: 1400 W. Washington, Suite 230  
Phoenix, AZ 85007  
Telephone: (602) 542-8604  
Fax: (602) 542-3093  
E-mail: craig.runbeck@npbomex.az.gov

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

An oral proceeding will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony and providing adequate discussion on the proposed rules from members of the public.

Date: March 8, 2004  
Time: 10:00 a.m.  
Location: 1400 W. Washington, B-1 Conference Room  
Phoenix, AZ 85007

The public record on the proposed rulemaking will close at 5:00 p.m. on March 8, 2004.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-15-101. Definitions

R4-15-102. Fees

ARTICLE 2. LICENSING

Section

R4-15-201. Application for a Regular License

R4-15-202. Application for a Provisional License

R4-15-203. Application for a License by Reciprocity

R4-15-204. Board-approved School

R4-15-207. Licensing Time-frames

ARTICLE 1. GENERAL PROVISIONS

**R4-15-101. Definitions**

In addition to the definitions in A.R.S. § 32-4201, in this Chapter:

1. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges.
  - b. Middle States Association of Colleges and Secondary Schools.
  - c. North Central Association of colleges and Schools.
  - d. Northwest Association of Schools and Colleges.
  - e. Southern Association of Colleges and Schools.
  - f. Western Association of Schools and Colleges, or
  - g. Council on Massage Therapy Accreditation.
2. "Applicant" means an individual requesting a regular, provisional, temporary or reciprocity license from the Board.
3. "Application packet" means the documents, forms, fees, and additional information required by the Board of an applicant.
4. "Board approved school" means the same as in A.R.S. § 32-4201.
5. "Hour" means a minimum of 50 minutes.
6. "Day" means calendar day.
7. "General equivalency diploma" means:
  - a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
  - b. A document issued by a state other than Arizona to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B);
  - c. A document issued by a country other than the United States to an individual who has completed that country's equivalent of a 12th grade education as determined by the Board based upon information obtained from American or foreign consulates or embassies or other governmental entities.
8. "Good moral character" means an applicant:
  - a. Has not, within the five years before the date of the application, been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation or other similar offense;
  - b. Has not, within five years preceding the date of the application, been convicted of an act involving dishonesty, fraud, misrepresentation, gross negligence, or incompetence;
  - c. Is not currently incarcerated or on community supervision after a period of incarceration in a local, state, or federal penal institution;
  - d. Has not, within five years preceding the date of the application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in-lieu of disciplinary action;
  - e. Has not, within five years preceding the date of the application, had a massage therapy certification revoked or suspended by a national massage therapy certifying agency;
  - f. Has not practiced massage therapy without the required license in this state or in another jurisdiction within the United States within the five years preceding the date of the application; or

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- g. Is not currently under investigation, suspension, or restriction by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
- 9. "License" means written authorization issued by the Board to engage in the practice of massage therapy in Arizona.
- 10. "Massage therapy student" means an individual receiving instruction in massage therapy or bodywork therapy at a Board-approved school.
- 11. "NCBTMB" means National Certification Board for Therapeutic Massage and Bodywork, the body that is accredited by the National Commission for Certifying Agencies and provides examinations of and certifies individuals in massage therapy and bodywork.
- 12. "National massage therapy certificate number" means a unique identification number issued by the NCBTMB.
- 13. "Provisional license" means an approval issued by the Board to an applicant who meets the requirements in A.R.S. §§ 32-4222(B), 32-4222(C), and this Chapter.
- 14. "Regular license" means an approval issued by the Board to an applicant who meets the requirements in A.R.S. §§ 32-4222(A), 32-4222(B), and this Chapter.
- 15. "Practice of massage therapy" means the same as in A.R.S. § 32-4201.
- 16. "Self-supportive as a massage therapist" means that an individual has reported income each year to the United States Department of Revenue that was derived from the performance of services that would fall within the scope of the practice of massage each year from December 31, 1992 until December 31, 2004.
- 17. "Supervised instruction" means the massage therapist responsible for a massage therapy student at a Board-approved school:
  - a. Is present at the location where the massage therapy student is performing massage therapy as part of the massage therapy student's education;
  - b. Is immediately available for consultation; and
  - c. Evaluates the performance of the massage therapy student.

**R4-15-102. Fees**

- A.** The Board shall charge the following fees that are nonrefundable, unless A.R.S. § 41-1077 applies:
  - 1. Application for a license, \$250.
  - 2. Biennial license renewal, \$180.
  - 3. Reinstatement of a license, \$125.
  - 4. Delinquent renewal, \$125.
  - 5. Duplicate license, \$25.
- B.** The Board shall charge 25 cents per page for copying records, documents, letters, minutes, applications, and files.
- C.** An applicant shall pay an original license application fee or a fee for which a previous check was returned for insufficient funds in cash, cashier's check, or money order.
- D.** An applicant shall pay a renewal, reinstatement, or duplicate license fee in cash, cashier's check, money order, or personal check.

**ARTICLE 2. LICENSING**

**R4-15-201. Application for a Regular License**

- A.** An applicant for a regular license shall meet the requirements in A.R.S. § 32-4222(A) and (B) and submit an application packet that contains:
  - 1. An application form that includes:
    - a. The applicant's name, date of birth, place of birth, social security number, residence and business addresses, and residence and business telephone numbers;
    - b. Each name or alias previously or currently being used by the applicant;
    - c. The applicant's name as it will appear on the license;
    - d. To satisfy the requirements in A.R.S. § 32-4222(A)(5):
      - i. If the applicant graduated from a high school, the date of graduation and name of the high school; or
      - ii. If the applicant received a general equivalency diploma, the date the general equivalency diploma was awarded;
    - e. The name and address of each Board-approved school attended by the applicant and dates of attendance;
    - f. If applicable, the applicant's national massage therapy certificate number and date of certification;
    - g. Whether the applicant has successfully completed 500 hours of supervised instruction at a Board approved school;
    - h. Whether the applicant has passed the examination administered by the NCBTMB;

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- i. Whether the applicant, within the five years before the date of the application, has been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a similar offense or entered into a plea of no contest and, if so:
    - i. Charged felony or offense;
    - ii. Date of conviction;
    - iii. Court having jurisdiction over the felony or offense;
    - iv. Probation officer's name, address, and telephone number, if applicable;
    - v. A copy of the notice of expungement, if applicable; and
    - vi. A copy of the notice of restoration of civil rights, if applicable;
  - j. Whether the applicant has within five years before the date of the application voluntarily surrendered a license under A.R.S. § 32-4254 or had a license to practice massage therapy or another similar license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter.
  - k. Whether the applicant is currently under investigation, suspension, or restriction by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter.
  - l. Whether the applicant has committed any of the actions in the definition of good moral character in R4-15-101;
  - m. Whether the applicant is requesting a temporary license; and
  - n. A notarized statement, signed by the applicant, stating: the information on the application form is true and correct;
2. A completed and legible fingerprint card; and
  3. The fee required in R4-15-102.

**B.** In addition to the requirements in subsection (A) an applicant shall arrange to have directly submitted to the Board from the issuing entity:

1. A copy of the applicant's high school diploma or general equivalency diploma;
2. Written verification of a passing score on the NCBTMB examination; and
3. Academic transcripts from the Board-approved school from which the applicant graduated.

**R4-15-202. Application for a Provisional License**

**A.** An applicant for a provisional license shall meet the requirements in A.R.S. § 32-4222(A) and (C) and submit an application packet on or before December 31, 2004 that contains:

1. An application form that includes all of the information required in R4-15-201(A)(1), except R4-15-201(A)(1)(g) and:
  - a. To satisfy the requirements in A.R.S. § 32-4222(C)(1), whether the applicant has continuously practiced massage therapy in this state for at least three years before May 12, 2003 and completed a minimum of 200 hours of education and training in the study of massage therapy or bodywork therapy at a school that meets the requirements of A.R.S. § 32-4222(C)(1) and includes:
    - i. Forty-five hours in human anatomy and physiology;
    - ii. One hundred fifty hours in theory and practice; and
    - iii. Five hours in ethics, including confidentiality and privacy; sexual misconduct, financial misconduct; boundary issues, conflicts of interest; and appropriate referrals;
  - b. To meet the requirements in A.R.S. § 32-4222(C)(2), whether the applicant has been self-supportive as a massage therapist in this state since from and after December 31, 1992 and an explanation of the applicant's response; or
  - c. To meet the requirements in A.R.S. § 32-4222(C)(3), whether the applicant holds a current professional license from a municipality or political subdivision of this state that regulated the practice of massage therapy before May 12, 2003;
2. A completed and legible fingerprint card; and
3. The fee required in R4-15-102.

**B.** In addition to the requirements in subsection (A) an applicant shall arrange to have directly submitted to the Board from the issuing entity:

1. A copy of the applicant's high school diploma or general equivalency diploma, and
2. Academic transcripts from the Board-approved school from which the applicant graduated.

**R4-15- 203. Application for a License by Reciprocity**

**A.** An applicant for a license by reciprocity shall meet the requirements in A.R.S. § 32-4223 and:

1. Submit an application form that contains the information in R4-15-201(A)(1)(a), R4-15-201(A)(1)(b), R4-15-201(A)(1)(c) and:

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- a. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(1), the name of each state where the applicant was licensed continuously for five years immediately before the date of the application;
- b. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), the name of the national certification board for therapeutic massage or bodywork or other agency that meets the standards of the National Commission for Competency Assurance that certifies the applicant;
- c. Whether the applicant has within five years before the date of the application voluntarily surrendered a massage therapy license or had a massage therapy license or another similar license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline in this state; and
- d. A notarized statement, signed by the applicant, stating that: the information on the application form is true and correct;
2. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(1), submit a copy of the state's massage therapy statutes and rules and arrange to have a verification of a license or certificate in a jurisdiction in another state sent directly to the Board from the jurisdiction including:
  - a. The license or certificate number issued to the applicant by the jurisdiction.
  - b. Whether the jurisdiction has instituted disciplinary proceedings against the applicant or has unresolved complaints pending against the applicant, and
  - c. Whether the license or certificate is in good standing.
3. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), arrange to have a verification of certification as a massage therapist sent directly to the Board from the national certification board for therapeutic massage or bodywork or other agency that meets the standards of the National Commission for Competency Assurance.
4. Submit a completed and legible fingerprint card; and
5. Submit the fee required in R4-15-102.
- B.** In addition to the requirements in subsection (A) an applicant shall arrange to have directly submitted to the Board from the issuing entity:
  1. A copy of the applicant's high school diploma or general equivalency diploma, and
  2. Academic transcripts from the Board approved school from which the applicant graduated.

**R4-15-204. Board-approved School**

- A.** A massage therapy school or bodywork therapy school in this state that is offered by a community college or approved by the Arizona State Board for Private Post secondary Education is a Board-approved school.
- B.** A massage therapy school or bodywork therapy school in another state that is approved by an agency similar to the Board for Private Post Secondary Education that wishes to be a Board-approved school shall:
  1. Have a program that meets requirements that are substantially equivalent to those imposed by the Board for Private Postsecondary Education in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39.
  2. Submit an application packet to the Board that includes:
    - a. The name, address, and telephone number of the massage therapy school or bodywork therapy school;
    - b. The same information required by the Board for Private Postsecondary Education in R4-39-103(B); and
    - c. Documentation from the agency similar to the Board for Private Post Secondary Education that states the applicant meets the requirements of the agency.

**R4-15-207. Licensing Time-frames**

- A.** The overall time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame may not be extended by more than 25 percent of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1, and begins when the Board receives an application.
  1. If the application packet is not complete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
  2. If an application is complete, the Board shall send a written notice of administrative completeness to the applicant.
  3. If the Board grants the license during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.



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1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
  2. The Board shall send a written notice of approval to an applicant who meets the qualifications and requirements in A.R.S. Title 4, Chapter 15 and this Chapter.
  3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 4, Chapter 15 and this Chapter.
- D.** The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to supply the missing information under subsection (B)(1) or (C)(1).
- E.** An applicant who does not wish an application withdrawn may request a denial in writing within 360 days from the application submission date.
- F.** If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time-frame's last day.

**Table 1.      Time-frames (in Days)**

<u>Type of Approval</u>	<u>Statutory Authority</u>	<u>Overall Time-frame</u>	<u>Administrative Completeness Time-frame</u>	<u>Substantive Review Time-frame</u>
<u>Regular license</u> <u>R4-15-201</u>	<u>A.R.S. § 32-4222</u>	<u>180</u>	<u>90</u>	<u>90</u>
<u>Temporary License</u> <u>R4-15-201</u>	<u>A.R.S. § 32-4224</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Provisional License</u> <u>R4-15-202</u>	<u>A.R.S. § 32-4222</u>	<u>180</u>	<u>90</u>	<u>90</u>
<u>License by Reciprocity</u> <u>R4-15-203</u>	<u>A.R.S. § 32-4223</u>	<u>120</u>	<u>60</u>	<u>60</u>
<u>Out-of-state School Approval</u> <u>R4-15-204</u>	<u>A.R.S. § 32-4228</u>	<u>120</u>	<u>60</u>	<u>60</u>

# NOTICE OF PROPOSED RULEMAKING

## TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE  
TRANSACTION PRIVILEGE AND USE TAX SECTION**

**PREAMBLE**

- 1. Sections Affected**  
R15-5-1503
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**  
Authorizing statute: A.R.S. § 42-1005  
Implementing statute: A.R.S. § 42-5071
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 9 A.A.R. 1974, June 20, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Hsin Pai, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Room 810  
Phoenix, AZ 85007  
Telephone: (602) 716-6851  
Fax: (602) 716-7995  
E-mail: paih@revenue.state.az.us  
Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at [www.revenue.state.az.us/tra/draftdoc.htm](http://www.revenue.state.az.us/tra/draftdoc.htm).
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
The agency is amending the rule to reflect new guidelines for how the location of leasing activity for tangible personal property is determined for purposes of imposing the transaction privilege tax. The proposed rule also articulates several factors the agency may examine on leases or rentals of motor vehicles, and states that a taxpayer cannot take a deduction or credit for taxes paid to another state on a lease or rental of tangible personal property.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**  
There should not be any significant economic impact as a result of adopting the amended rules. Because the amendments provide for a new method of determining the location of leasing activity for taxation purposes, a minimal impact may occur for certain consumers and vendors due to increased compliance measures. The agency expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the exemptions will be greater than the costs.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: Hsin Pai, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Room 810  
Phoenix, AZ 85007

Notices of Proposed Rulemaking

Telephone: (602) 716-6851  
Fax: (602) 716-7995  
E-mail: paih@revenue.state.az.us

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: Monday, March 1, 2004  
Time: 9:00 a.m.  
Location: Arizona Department of Revenue—North Valley Office  
Conference Room One  
2902 W. Agua Fria Freeway  
Phoenix, AZ 85027

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rule:**

None

**13. The full text of the rule follows:**

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 15. PERSONAL PROPERTY RENTAL CLASSIFICATION

Section

R15-5-1503. ~~Location~~ Sourcing of Leased Equipment Tangible Personal Property

ARTICLE 15. PERSONAL PROPERTY RENTAL CLASSIFICATION

**R15-5-1503. ~~Location~~ Sourcing of Leased Equipment Tangible Personal Property**

- A. ~~Rental income from equipment leased by an Arizona lessor to a lessee who takes possession of the property in Arizona is taxable under this classification. In this Section:~~
1. ~~“Business location” means the business address that appears on a lessor’s privilege license, but if the lessor does not have a business address in Arizona, business location means the lessee’s residential or primary business street address.~~
  2. ~~“Source” means to determine the location of leasing or renting activity for tax purposes.~~
- B. ~~Rental income from equipment leased by an Arizona lessor to a lessee is not taxable when such equipment is shipped or delivered out of state, for use outside of the state. The personal property rental classification applies to a person who is engaging or continuing in the business of leasing or renting tangible personal property in Arizona for a consideration. Gross receipts from leasing or renting tangible personal property in Arizona are taxable under this classification.~~
- C. ~~Rental income from leasing of equipment by an out-of-state lessor is taxable when the equipment is shipped, delivered, or otherwise brought into Arizona, for use within the state. For example, when a vehicle is brought into Arizona and registered in Arizona, such vehicle is deemed to be for use in this state. The rental income is, therefore, taxable. The Department shall source gross receipts from leasing or renting tangible personal property to a lessor’s business location.~~
- D.** Gross receipts from leasing or renting tangible personal property are not taxable if the property is shipped or delivered outside of the state and intended, at the inception of the lease, for use exclusively outside of the state.
- E.** Gross receipts from leasing or renting tangible personal property are not taxable if the property is removed from the state and used exclusively outside of the state. Intermittent use of tangible personal property outside of the state does not constitute removal of the property from the state for use exclusively outside of the state, and therefore does not change the business location of the property or liability for the tax. For example, use of a business’s leased tangible personal property by its employees at different locations on business trips and service calls does not change liability for the tax.
- F.** The burden of proof for establishing the applicability of subsection (D) or (E) is on the lessor.
- G.** For leasing or renting activity related to a motor vehicle, the Department shall examine whether the motor vehicle is licensed, registered, or primarily used in Arizona.
- H.** A taxpayer shall not take a deduction or credit for taxes paid in another state on a lease or rental of tangible personal property.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
TITLE, REGISTRATION, AND DRIVER LICENSES

PREAMBLE

**1. Sections Affected**

R17-4-501  
R17-4-508

**Rulemaking Action**

Amend  
Amend

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-3051 and 28-3223

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 369, January 30, 2004

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Troy Walters, Rules Analyst

Address: Administrative Rules Unit  
Department of Transportation, Mail Drop 507M  
3737 N. 7th Street, Suite 160  
Phoenix, AZ 85014-5079

Telephone: (602) 712-6722

Fax: (602) 241-1624

E-mail: twalters@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at [www.dot.state.az.us/about/rules/index.htm](http://www.dot.state.az.us/about/rules/index.htm).

**5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

R17-4-508 contains the medical standards for commercial motor vehicle drivers. R17-4-501 incorporates one definition previously in a subsection of R17-4-508. This rulemaking action arises from a five-year review report approved by the Governor's Regulatory Review Council on December 7, 1999 (F-99-1202). The agency plans to update and revise the rules for clarity and further amend these Sections to include current agency practice in assessing commercially licensed driver physical qualifications.

**6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not rely on any study in this rulemaking.

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The agency's statistics for an average year show that approximately 500 commercial driver licenses (CDLs) are suspended, denied, or revoked for actually failing to meet federal commercial driver physical qualifications. By contrast, approximately 11,500 are suspended for mere failure to submit USDOT physical examination forms to the agency. Per examination costs to the driver-applicant are minimal. CDL reinstatement is immediate upon driver submission of appropriate physical examination documentation. Agency cost per case is minimal to ensure adequate compliance with 49 CFR 391 standards. Collectively, however, the benefits in motoring safety and commercial driver health standards integrity are substantial to the citizens and business entities of Arizona.

Notices of Proposed Rulemaking

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Interested persons may contact the Department official listed in item #4 regarding the economic, small business, and consumer impact statement.

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

No oral proceeding is scheduled for this rulemaking. Written, phoned, faxed, and e-mail requests for an oral proceeding or for general comments will be taken by the Department official listed in item #4, Monday through Friday, 8:00 a.m. to 4:30 p.m., except state holidays. If no oral proceeding is requested, the public record for this rulemaking will close on March 5, 2004.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
TITLE, REGISTRATION, AND DRIVER LICENSES**

**ARTICLE 5. SAFETY**

Section

R17-5-501. Definitions

R17-4-508. ~~Physical Qualifications for Commercial Motor Vehicle Drivers~~ Commercial Driver License "CDL" Physical Qualifications

**ARTICLE 5. SAFETY**

**R17-4-501. Definitions**

~~Unless otherwise indicated, the following definitions apply to this Article~~ The following definitions apply to this Article unless otherwise specified:

1. "Adaptation" means a modification of or addition to the standard operating controls or equipment of a motor vehicle.
2. "Applicant" or "licensee" means a person:
  - a. Applying for an Arizona driver license or driver license renewal, or
  - b. Required by the Division to complete an examination successfully or to obtain an evaluation.
3. "Application" means the Division form required to be completed by or for an applicant for a driver license or driver license renewal.
4. "Arizona Driver License Manual" or "manual" means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.
5. "Aura" means a sensation experienced before the onset of a neurological disorder.
6. "Certified substance abuse counselor" is defined in A.R.S. § 28-3005(C)(1).
7. "Commercial Driver License physical qualifications" or "CDL physical qualifications" means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.
- ~~7-8.~~ "Director" means the Division Director or the Division Director's designee.
- ~~8-9.~~ "Disqualifying medical condition" means a visual, physical, or psychological condition, including substance abuse that impairs functional ability.
- ~~9-10.~~ "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
- ~~10-11.~~ "Driver license" is defined in A.R.S. § 28-101(19).
- ~~11-12.~~ "Evaluation" means a medical assessment of an applicant or licensee by a specialist as defined under ~~(21)~~ (22) of this Section to determine whether a disqualifying medical condition exists.
- ~~12-13.~~ "Examination" means testing or evaluating an applicant's or licensee's:
  - a. Ability to read and understand official traffic control devices,
  - b. Knowledge of safe driving practices and the traffic laws of this state, and
  - c. Functional ability.

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- ~~13-14.~~ "Functional ability" means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.
- ~~14-15.~~ "Identification number" means a distinguishing number assigned by the Division to a person for a license or instruction permit.
- ~~15-16.~~ "Licensee" means a person issued a driver license by this state.
- ~~16-17.~~ "Licensing action" means an action by the Division to:
- Issue, deny, suspend, revoke, cancel, or restrict a driver license; or
  - Require an examination or evaluation of an applicant or licensee.
- ~~17-18.~~ "Medical screening questions and certification" means the questions and certification on the application, as shown in Exhibit A following ~~this Section~~ R17-4-502.
- ~~18-19.~~ "Neurological disorder" means a malfunction or disease of the nervous system.
- ~~19-20.~~ "Physician" means a person licensed to practice medicine or osteopathy in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
- ~~20-21.~~ "Seizure" means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.
- ~~21-22.~~ "Specialist" means:
- A physician who is a surgeon or a psychiatrist;
  - A physician whose practice is limited to:
    - A particular anatomical or physiological area or function of the human body, or
    - Patients within a specific age range; or
  - A psychologist.
- ~~22-23.~~ "Substance abuse" means:
- Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021(1), or
  - Drug dependency as described in A.R.S. § 36-2501(A)(5).
- ~~23-24.~~ "Substance abuse evaluation" means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.
- ~~24-25.~~ "Successful completion of an examination" means an applicant or licensee:
- Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or
  - Achieves a score of at least 80 percent on a written test and road test.

**R17-4-508. ~~Physical Qualifications for Commercial Motor Vehicle Drivers~~ Commercial Driver License "CDL"  
Physical Qualifications**

**A. Definitions**

- ~~"Commercial Motor Vehicle" has the same meaning as set forth in A.R.S. § 28-402.~~
- ~~"Division" means the Motor Vehicle Division of the Arizona Department of Transportation.~~
- ~~"Physical qualifications" means those physical qualifications set forth in 49 CFR as adopted in R17-4-435 and R17-4-435.02.~~

**~~B. Requirements. Every Arizona licensed driver operating a commercial motor vehicle shall:~~**

- ~~Meet the physical qualifications set forth in 49 CFR as adopted in R17-4-435 and R17-4-435.02, and~~
  - ~~Have an original or copy of a current medical examination certificate as required by 49 CFR as adopted in R17-4-435 and R17-4-435.02 in the vehicle and available to law enforcement officers upon request.~~
  - A CDL applicant shall submit to the Division a U.S. Department of Transportation medical examination form completed as prescribed under 49 CFR 391.43:
    - By a professional licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
      - Medical Doctor;
      - Doctor of Osteopathy;
      - Doctor of Chiropractic;
      - Nurse Practitioner; or
      - Physician Assistant; and
    - Upon the applicant's initial application and at the time of each 24-month renewal.
  - As prescribed under 49 CFR 391.41(a), a CDL licensee shall keep an original or photographic copy of the licensee's current medical examination form required under subsection (A)(1) available for law enforcement inspection upon request.
  - A CDL licensee shall notify the Division of a physical condition that develops or worsens causing noncompliance with the CDL physical qualifications within ten days after onset.
- B. CDL suspension and revocation notification procedure. To notify a licensee of any CDL suspension and revocation under subsection (C), the Division shall simultaneously mail two notices within 15 days after a medical examination form's due or actual submission date to the licensee's address of record that:**

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1. Suspends the licensee's CDL beginning on the notice's date; and
2. Revokes the licensee's CDL 15 days after the date of the suspension notice issued in (C)(1).
- C.** Failure to meet or maintain physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02.
  1. No person shall be issued a Class A, B, or C license if that person fails to meet physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02.
  2. A person who has been issued a Class A, B, or C license who subsequently fails to maintain physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02 shall notify the Division of the condition within 5 days of the occurrence or as soon as the condition allows.
  3. A failure to maintain physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02 shall be deemed to cause such a danger to the public health, safety, and welfare that it is imperatively required that the Division take emergency action. Therefore, the Division shall summarily suspend and revoke the licensee's Class A, B, or C license by 5:00 p.m. on the next business day after notification of the condition.
  4. If the written medical examination report fails to establish whether or not physical qualifications, in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02, have been met, the incomplete report shall be returned to the applicant or licensee by mail to the address provided to the Division. The applicant or commercial licensee shall be notified in writing by 5:00 p.m. the next business day from the date of determination that additional information is required. If the requested information is not received within 30 days from the date of the notice, the Division shall summarily suspend and revoke by 5:00 p.m. the next business day the Class A, B, or C license issued to the licensee or deny issuance to the applicant.
  5. Upon summarily suspending the Class A, B, or C license for failure to maintain physical qualifications in accordance with 49 CFR as adopted in R17-4-435 and R17-4-435.02 or failure to submit a complete medical examination report, the Division shall notify the person by mail of the licensing action, within 3 business days from the date of action to the person's address of record.
- C.** Noncompliance actions.
  1. Initial application denial. If an initial applicant's medical examination form required under subsection (A)(1) shows that the applicant is not in compliance with the CDL physical qualifications, the Division shall immediately mail CDL denial notification to the applicant's address of record.
  2. Twenty-four-month-renewal suspension and revocation. If a renewing CDL licensee submits:
    - a. No medical examination form required under subsection (A)(1) or a form indicating noncompliance with CDL physical qualifications, the Division shall follow the notification procedure prescribed under subsection (B).
    - b. An incomplete medical examination form required under subsection (A)(1), the Division shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Division within 45 days after the date of the Division's letter. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information in the time-frame prescribed in this subsection.
    - c. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 140 systolic or 90 diastolic, the Division shall mail notice to the licensee requiring three additional blood pressure evaluations:
      - i. Made on three different days;
      - ii. Performed by a qualified professional as prescribed under subsection (A)(1)(a); and
      - iii. Returned to the Division within 90 days after the Division's written notification.The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information as prescribed under subsection (C)(2)(c)(iii).
    - d. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 180 systolic or 104 diastolic, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).
- D.** Hearings and appeals.
  1. Where licensing actions have been taken adverse to the licensee or applicant pursuant to this rule, the licensee or applicant may request a hearing with the Executive Hearing Office within 15 days from the date of the notice of the licensing action.
  2. All hearings and appeal procedures shall be in accordance with Article 9 of this Chapter.
- D.** Special CDL reinstatement provision. If a person's CDL remains revoked for longer than 12 months, the Division shall require successful completion of all CDL original-application written, vision, and demonstration-skill testing in addition to medical examination form prescribed under (A)(1).
- E.** Administrative hearing. A person denied, suspended, or revoked under this Section may request a hearing according to procedure prescribed under 17 A.A.C. 1, Article 5.